IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 23494 of 2007(V)

PETITIONER:

S.GANESH, AGED 68,
S/O.SUBRAMANIAN CHETTIAR, NADUTHERUVIL HOUSE,
CHELUR, MANAVALASSERY VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT, REVENUE DEPARTMENT, THRISSUR.

2. THE DISTRICT COLLECTOR, COLLECTORATE, AYYANTHOLE, THRISSUR.

3. THE DEPUTY COLLECTOR, (LAND ACQUISITION) THRISSUR.

BY SR. GOVERNMENT PLEADER SHRI BENNY VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

W.P.(C) No.23494 of 2007 V

Dated, this the 18th day of September, 2007

JUDGMENT

Some properties owned by the petitioner were acquired for a public purpose. Petitioner did not file an application under Section 18 of the Land Acquisition Act (for short 'the Act') for referring the matter to the Sub Court concerned for considering the claim for enhancement. According to the petitioner, in respect of another parcel of land covered by the same notification there was a reference under Section 18 of the Act and the Land Acquisition Court awarded enhancement. The petitioner filed an application under Section 28A of the Act claiming enhancement and produced a copy of the judgment passed in L.A.R.No.15/1994. The grievance of the petitioner is that that application was filed as early as on 27.10.2004 through Advocate Shri Polly J. Anikattu.

2. Respondents 2 and 3 have filed counter affidavit contending that though petitioner produced a copy of the judgment pronounced in L.A.R.No.15/1994, along with that judgment petitioner did not file any application under Section 28A of the Act.

3. Petitioner has produced a copy of the acknowledgment card and also a copy of the postal receipt to show that on 30.10.2004 he filed application under Section 28A of the Act. It also shows that the application was received by the Deputy Collector (LA), Collectorate, Thrissur on 1.11.2004. Even assuming that

there was an omission on the part of the lawyer to enclose the application under Section 28A of the Act along with a copy of judgment in L.A.R.No.15/1994, I am of the view that the intention of the petitioner as well as Advocate was very clear. There is absolutely no need for the petitioner to send a copy of the judgment pronounced by the court in L.A.R.No.15/1994 unless his intention was to claim benefit under Section 28A of the Act. So even accepting the contention of the respondents that there was omission on the part of the Advocate who was instructed to file an application under Section 28A to enclose the application along with the judgment, I am of the view that the petitioner cannot be penalised for the same. So I am of the view that it shall be deemed that the application for enhancement of claim under Section 28A of the Act was filed on 1.11.2004. The petitioner is allowed to file an additional copy of the same within a period of two weeks from the date of receipt of a copy of the judgment. In case petitioner files a copy of the application, the Land Acquisition Officer shall treat it as an application filed on 1.11.2004 and dispose of the same in accordance with law within six weeks from the date of receipt of the same, after hearing the petitioner.

K. PADMANABHAN NAIR,
JUDGE.

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